

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CESSNA FINANCE CORPORATION,

Plaintiff,

-against-

ZAF CONSTRUCTION INC., AVIATION
CONSULTANTS U.S., INC., KENNETH
FELTROP, and SUNDANCE AVIATION,
LLC a/k/a ATLANTIC AVIATION,

Defendants.

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ORDER

Civil Action No. 17-1848

The purpose of the Order is to address the motion, made pursuant to Fed. R. Civ. P. 16, of defendants ZAF Construction, Inc. (“ZAF”), Aviation Consultants U.S. Inc. (“AC”) and Kenneth Feltrop (“Feltrop”) (collectively “Defendants”) for attorney’s fees and expenses incurred as a result of the failure of counsel for Plaintiff Cessna Finance Corporation (“Plaintiff” or “Cessna”) to appear at the show cause hearing scheduled for 11:00 a.m. on April 20, 2017. Having already determined that plaintiff’s absence was not substantially justified and that an award was warranted, this Order addresses that amount of said award.

Rule 16(f) of the Federal Rules of Civil Procedure allows a court to impose sanctions when a party fails to appear at a court-ordered proceeding. Fed. R. Civ. P. 16(f)(1). Furthermore, “[i]nstead of or in addition to any other sanction, the court must order, the party, its attorney, or both to pay the reasonable expenses - including attorney’s fees - incurred . . . unless noncompliance was substantially justified or other circumstances make an award of expenses unjust.” *Id.* 16(f)(2). Here, the question is the reasonableness of the amounts sought.

Attorney's Fees

Defendants seek attorney's fees in the amount of \$2006.00 representing 6.8 hours of time billed at \$295.00 per hour for Attorney Ferrier's time. Having been admitted to practice since 2008, the rate of \$295.00 per hour is an appropriate hourly rate for someone of her experience. *See generally Douyon v. NY Med. Health Care, P.C.*, 49 F. Supp.3d 328, 343 (E.D.N.Y. 2014). The 6.8 hours claimed represent 1.8 hours spent in court, including over an hour spent waiting for Plaintiff's counsel to appear, and five hours of travel time. Five hours is a reasonable amount of time to travel from Manhattan to the courthouse and vice versa. While it is permissible for a court to award less than 100% for travel time, such a reduction is not warranted in this case. In Defendants' application, Attorney Ferrier represents that she has billed Defendants for her travel time on April 20. As between Defendants and Plaintiff, that cost should be borne by Plaintiff inasmuch as these fees were needlessly incurred when Plaintiff's counsel failed to appear at the hearing scheduled for 11:00 a.m. on April 20 due solely to his own mistake. Accordingly, the award shall include \$2006.00 in attorney's fees plus \$27.50 for counsel's train fare.

Expenses

Defendants also seek \$3,055.76 in expenses for Feltrop's attendance on April 20, 2017. According to his affidavit, Feltrop, who lives a half hour away from the nearest commercial airport, decided to fly his own plane to ensure his timely arrival. (DE 22-1 ¶ 2.) The round trip flight time was 5.3 hours and "[t]he plane commands a rental rate of \$350.00 per hour and the rate for a qualified pilot is \$600." (*Id.* ¶ 3.) The total sought for these items is \$2455.00. (*Id.*) In addition, \$506.02 for the cost of fuel and \$94.74 for a rental car is sought. (*Id.* ¶¶ 4,5.) The Court has no quarrel with Feltrop's reason for flying his own plane rather than taking a commercial

flight. However, given that Feltrop flew the plane himself, the request for \$600 for a qualified pilot is unreasonable. Also, the request for the rental rate of \$600 is unreasonable as the plane belongs to Feltrop and there is no representation that the airplane would have been otherwise rented on the day of the hearing. Hence, the award of expenses will be limited to \$600.76, i.e. the cost for fuel and the rental car.

Accordingly, **IT IS HEREBY ORDERED THAT** plaintiff Cessna Finance Corporation and/or its counsel, John Manfredi, Esq. is directed to pay within sixty (60) days of the date hereof the amount of \$2634.26 to defendants ZAF Construction, Inc., Aviation Consultants U.S. Inc. and Kenneth Feltrop for attorney's fees and expenses incurred as a result of the failure of counsel for plaintiff Cessna Finance Corporation to appear at the show cause hearing that was scheduled for 11:00 a.m. on April 20, 2017.

Dated: Central Islip, New York
May 18, 2017

/s/ Denis R. Hurley
Denis R. Hurley
United States District Judge